Editor's note: appealed - aff'd, Civ.No. C-81-0458 J (D.Utah Aug. 16, 1982)

CAROLYN W. LAESER

IBLA 81-323 Decided March 26, 1981

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting the first-drawn drawing entry card for oil and gas lease U-45444.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

   Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

APPEARANCES: William M. King, Esq., Austin, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Carolyn W. Laeser appeals from the January 12, 1981, decision of the Utah State Office, Bureau of Land Management (BLM), rejecting the drawing entry card (DEC) filed by appellant in the January 1980 drawing for noncompetitive oil and gas leases in Utah. Appellant's DEC was selected with first priority for parcel UT 47 in this drawing.

On November 13, 1980, the Utah State Office requested from appellant a copy of any service agreements or collateral agreements between her and any other party. This request was provoked by the fact that appellant's DEC did not appear to have been signed manually, but rather appeared to bear the facsimile signature of appellant. A copy of a service agreement between Leland Capital Corporation (Leland) and appellant was thereafter submitted to BLM. The terms of this contract state that Leland will provide its advisory services "in connection with, and to file" 144 filings per 6 months "pursuant to LCC's [Leland Capital Corporation's] Federal Oil Land Acquisition Program." For these services, appellant agreed to pay a nonrefundable sum of $6,000. Against the invoice of Leland, appellant also agreed to pay to Leland all costs of the first year's advance rentals.

Based upon these facts, BLM concluded that Leland had discretionary authority to act for appellant in the selection of lands, the preparation and filing of offers, and the advancement of funds. The effect of such authority, BLM further concluded, was to require that appellant's DEC be accompanied by certain statements referred to in 43 CFR 3102.6-1. Failure to accompany her DEC with such statements caused rejection of appellant's first-drawn DEC.

[1] Regulation 43 CFR 3102.6-1(a)(2) states in part:

> (2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,000 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. [1/]

1/ This regulation was revised effective June 16, 1980. 45 FR 35156 (May 23, 1980). It presently reads as follows:

"§ 3102.2-6 Agents.

In appellant's statement of reasons on appeal, counsel argues that the above-quoted regulation does not apply because Leland does not act as appellant's agent. Counsel also contends that Leland does not have discretionary authority to act on appellant's behalf. This latter reference to discretionary authority alludes to this Board's decision in D. E. Pack (On Reconsideration), 38 IBLA 23 (1978), 2/ wherein a similar agency relationship was addressed in the syllabus in these words:

> Where a drawing entry card form of offer to lease a parcel of land for oil and gas is prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent or attorney-in-fact on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of

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fn. 1 (continued)

"(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: a power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement. (b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with subpart 3112 of this title."

2/ Since issuance of this decision on Nov. 9, 1978, the District Court for the District of Utah, Central Division, has ruled that our holding therein may be applied prospectively only. The Secretary and his designees were enjoined from applying the Pack holding to lease offers filed prior to Nov. 9, 1978. The filing by appellant was dated Jan. 23, 1980. Runnels v. Andrus, No. C 77-0268 (D. Utah, Feb. 19, 1980) (Memorandum Opinion and Order). This opinion of the District Court of Utah was adopted by the District Court for the District of Wyoming in Stewart Capital Corp. v. Andrus, No. C79-123K (D. Wyo., Apr. 24, 1980) (Order and Memorandum Opinion). A contrary result affirming the retroactive application of Pack was reached by the District Court for the Southern District of Mississippi, Southern Division, in McDonald v. Andrus, No. S77-0333 (C).

> interest by both the offeror and the agent must be filed, regardless of whether [the agent] signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

Therein, we found that a filing service had discretionary authority to act on behalf of an offeror where an agreement existed between these parties by which the filing service for a stipulated fee selected parcels of superior value from the monthly lists of available BLM lands, prepared DEC's for these parcels by inserting the name of the offeror, his facsimile signature, parcel number, and date, and then filed these DEC's in the proper BLM offices.

Examining the service contract between Leland Capital and Laeser once again, we note that for the sum of $6,000 Laeser retained Leland Capital "to provide its advisory services" in filing 144 DEC's "pursuant to LCC's Federal Oil Land Acquisition Program." Leland Capital agreed to file on parcels which had a potential of $10,000 or more. Appellant agreed to pay to Leland Capital, against invoice, all costs of the first year's advance rental. The service contract at issue here, while not identical to that discussed in Pack, supra, is sufficiently similar to support our requiring the filing of statements pursuant to 43 CFR 3102.6-1 with appellant's offer.

Counsel contends that the contract provisions whereby Leland agrees "to file client on parcels which have a potential of $10,000 or more" does not require Leland to select, but merely to file, a clerical and administrative task. We are not persuaded by this argument. Leland's agreement to file for parcels with a potential of $10,000 or more requires Leland to evaluate the worth of those parcels which BLM places in its monthly list. To evaluate the worth of a parcel, Leland might consider past bonuses for the parcel, past exploration or development in the area, or present and future plans for exploration. Leland does not contend that it merely advises its clients of parcels which it believes are worth more than $10,000 and then awaits their instructions. Rather Leland "selects" these parcels itself, and then "files" its clients' DEC's on these parcels. Leland's practice is clearly within the scope of the agency definition as delineated by D. E. Pack, On Reconsideration, supra. See Henry S. Alker, 49 IBLA 118 (1980); Elizabeth Murase, 47 IBLA 115 (1980).

Appellant notes that revised regulation 43 CFR 3102.2-6, effective June 16, 1980, relaxes the requirements of 43 CFR 3102.6-1, quoted above. This Board has expressed on several occasions a policy to apply an amended regulation benefiting an applicant in a pending case where such may be done in the absence of intervening rights of third parties or prejudice to the interests of the United States. Duncan Miller, 28 IBLA 292 (1976). Assuming, arguendo, that appellant had complied with the revised regulation, an allegation which appellant does not make, we find that there are intervening rights of third parties which

preclude our applying the revised regulation. In noncompetitive bidding for oil and gas leases, the only difference between the entries is the order in which they are drawn. The drawing entry cards are considered to have been simultaneously filed. To apply to an unqualified first-drawn applicant a regulation not in effect at the time of filing or drawing is to infringe on the rights of the second-drawn qualified offeror. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge